

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**L.D., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Jackson, MS,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 17-1808  
Issued: December 28, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 21, 2017 appellant filed a timely appeal from a July 12, 2017 merit decision and an August 8, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a right elbow condition causally related to factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

On appeal, appellant contends that he sustained a work-related condition as supported by his physician's rationalized medical opinion regarding the causal relationship between his

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

repetitive and strenuous work duties and the claimed injury. He further contends that he did not have the claimed medical diagnosis prior to working at the employing establishment.

### **FACTUAL HISTORY**

On October 26, 2016 appellant, then a 28-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that on May 3, 2016 he first became aware of his lateral epicondylitis condition and realized that it was caused by factors of his federal employment. He noted that he lifted oversized packages more than eight hours a day, six days a week and that he experienced pain and popping in his right elbow. Appellant had not previously experienced any right elbow discomfort prior to May 3, 2016. He stopped work on August 3, 2016.

In support of his claim, appellant submitted a patient profile report dated May 4, 2016 from a registered nurse. She indicated that he had tennis elbow.

By letter dated November 2, 2016, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its development questionnaire. It noted that nurses were not considered physicians as defined under FECA and that medical evidence supporting the claim must be signed by a physician.

OWCP subsequently received an unsigned report, dated June 7, 2016, from Baptist Medical Clinic/Family Medicine Northtown. The report indicated that appellant presented with right elbow pain and his symptoms began one month ago. Appellant had right lateral epicondylitis pain for four weeks and had been off work for the same time period. The report noted that appellant lifted heavy boxes at work.

In a January 25, 2017 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment, *i.e.*, working with oversized packages.

On June 12, 2017 appellant submitted an appeal request form requesting reconsideration and additional medical evidence. In a June 5, 2017 progress note, Dr. David J. Gandy, an attending Board-certified orthopedic surgeon, noted appellant's complaint of right elbow pain with grip and that appellant also noted his family history, social history, and medical background. He indicated that appellant was diagnosed as having tennis elbow in May 2016 for which he received medical treatment. Appellant related that his symptoms had improved with rest, but worsened with repetitive activities. Dr. Gandy reported that appellant described his work duties, which included repetitive lifting, grasping, moving, and pulling of boxes all day. He advised appellant that this was consistent with his described symptoms of lateral epicondylitis. Dr. Gandy discussed findings on physical examination of the right elbow, diagnosed right elbow lateral epicondylitis, and addressed appellant's treatment plan.

By letter dated June 19, 2017, OWCP advised appellant that it was unable to proceed with his request for reconsideration because the appeal request form was unsigned and undated. Appellant was advised to complete the form and return it to OWCP.

On an appeal request form dated June 12, 2017, received on July 3, 2017, appellant again requested reconsideration.

In a July 12, 2017 decision, OWCP denied modification of its January 25, 2017 decision. It found that Dr. Gandy failed to provide a rationalized medical opinion sufficient to establish causal relationship between appellant's right elbow condition and the established factors of his federal employment.

In an appeal request form and note received on July 27, 2017, appellant again requested reconsideration. He contended that his right elbow condition was caused by repetitive heavy lifting of oversized packages at work and reiterated that he did not experience this problem prior to working at the employing establishment. Appellant further claimed that each of his physicians supported that his job was the root cause of his injury and that it would not improve if he continued to work in the same job.

Appellant submitted a July 19, 2017 follow-up report in which Dr. Gandy reiterated his prior diagnosis of right elbow lateral epicondylitis. Dr. Gandy noted that appellant's condition had improved, but that he experienced pain again when he returned to his prior work duty. He recommended that appellant resume physical therapy. Dr. Gandy also placed appellant on work restrictions regarding the use of his right upper extremity.

Appellant also submitted an April 29, 2017 report from a nurse practitioner. She noted his history, reported findings on examination, and diagnosed right elbow lateral epicondylitis.

By decision dated August 8, 2017, OWCP denied appellant's request for reconsideration of the merits of the claim. It found that the evidence submitted in support of reconsideration was irrelevant, immaterial, or cumulative.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

---

<sup>2</sup> *Id.*

<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted as factual that appellant performed the work duties of a mail processing clerk, which involved working with oversized packages. The Board finds, however, that the medical evidence of record is insufficient to establish a right elbow condition caused or aggravated by the accepted federal employment factors.

Dr. Gandy's June 5, 2017 progress note found that appellant had right elbow lateral epicondylitis. He noted appellant's description of his work duties, which involved repetitive lifting, grasping, moving, and pulling of boxes. While Dr. Gandy maintained that these work duties were consistent with appellant's described symptoms of lateral epicondylitis, he failed to provide a probative, rationalized opinion regarding whether the accepted federal employment factors caused a personal injury.<sup>6</sup> He did not sufficiently explain why, medically, appellant would have sustained a right elbow injury due to repetitive employment factors involved in working with oversized packages.

Appellant submitted a May 4, 2016 patient profile report from a registered nurse. However, this evidence is of no probative medical value as registered nurses are not considered physicians as defined under FECA.<sup>7</sup> In addition, the unsigned June 7, 2016 report from Baptist Medical Clinic/Family Medicine Northtown has no probative medical value as the author cannot be identified as a physician.<sup>8</sup>

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish a right elbow injury causally related to the established factors of his federal employment. Appellant, therefore, has not met his burden of proof.

---

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

<sup>6</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>7</sup> 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (a nurse is not considered a physician under FECA).

<sup>8</sup> See *J.W.*, Docket No. 17-0870 (issued July 12, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

On appeal, appellant contends that he sustained a work-related condition based on his physician's rationalized medical opinion regarding the causal relationship between his repetitive and strenuous work duties and his claimed injury. For the reasons set forth above, the Board finds that the weight of the medical evidence does not establish that he sustained a right elbow condition or injury causally related to the accepted employment factor. Appellant further contends on appeal that he did not have the claimed medical diagnosis prior to working at the employing establishment. However, neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>9</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>10</sup> Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>11</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>12</sup> Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. In support of his July 27, 2017 request for reconsideration, appellant submitted a new report dated July 19, 2017 from Dr. Gandy in which he related his diagnosis of right elbow lateral epicondylitis and found that appellant's condition had worsened upon his return to his prior work duty. This evidence, however, essentially reiterated Dr. Gandy's diagnosis and opinion set forth in his prior June 5, 2017 report of record. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and

---

<sup>9</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.608(a).

<sup>12</sup> *Id.* at § 10.606(b)(3).

<sup>13</sup> *Id.* at § 10.608(b).

does not constitute a basis for reopening a case.<sup>14</sup> The Board finds, therefore, that Dr. Gandy's July 27, 2017 report is insufficient to reopen appellant's claim for further merit review.

The new report dated April 29, 2017 from a nurse practitioner is insufficient to warrant merit review as nurse practitioners are not considered physicians as defined under FECA.<sup>15</sup> Thus, this evidence is of no probative value<sup>16</sup> and it is, therefore, irrelevant to the underlying medical issue.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish a right elbow condition causally related to factors of his federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

---

<sup>14</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>15</sup> 5 U.S.C. § 8101(2); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA).

<sup>16</sup> *See L.D.*, *id.*

<sup>17</sup> *See A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8 and July 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 28, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board